

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

RECEIVED

In the Matter of the Appeal of

GREG and CAROLYN HEBERLEIN
HANS FORSTER
JONNY HAHN

FEB 22 1991

SEPA
PUBLIC INFORMATION CENTER

MUP-90-098(W)
MUP-90-099(W)
MUP-90-100(W)

from a decision of the Director
of the Department of Construction
and Land Use on a master use permit
application

INTRODUCTION

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance (MUP) Chapter 23.76 Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 31, 1991. The record was left open for the Examiner to conduct two site inspections. The first site inspection was conducted on February 8, 1991. The second site inspection was conducted on February 20, 1991.

Parties to the proceeding were: appellants, Jonny Hahn, Greg Heberlein, and Hans Forster, *pro se*; Leigh Francis, Land Use Specialist, for the Director of Construction and Land Use (DCLU); and the applicant, David Devin.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, and the site inspections of the subject property and the surrounding area by the Deputy Hearing Examiner, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

FINDINGS OF FACT

1. The subject property is located at 3658 Dayton Ave. N. between 36th and 39th Streets. The property measures 100' by 100'square feet which makes the lot size approximately 10,000 square feet.
2. The subject property is zoned Lowrise 3 (LR3). The LR-3 zoning extends for some distance beyond the subject property. The area is developed with primarily single family residences, though there are several multi-family dwellings on the block.
3. The applicants, David Devin, *et al* applied for a master use permit to demolish an existing single family residence and a duplex and garage

and to construct a four-story, 14 unit apartment building. DCLU issued a Determination of Non-Significance (DNS) with conditions.

4. The development standards in effect when the applicants submitted their MUP application allowed for a maximum building height limit of 37' and a maximum building width of 90' in a LR-3 zone. The applicant's permit request is vested under the standard in effect when they filed their MUP application. Under the new development standards, the maximum height limit is 30' and the maximum width is 75' in a LR-3 zone.

5. The appellants are homeowners, tenants and neighbors in the surrounding area. In addition to the appellant's testimony, several other neighbors testified on their own behalf or on behalf of others who were unable to attend the public hearing. During the comment period, DCLU received 44 comment letters and a petition signed by 134 people opposing the proposed project. There was also significant community communication with the land use specialist who was previously assigned to this matter, during public hearings and neighborhood meetings.

6. The building proposed for this site will have 14 1,2 and 3 bedroom units. The building facade will have balconies on each level and there will be 2,670 square feet of open space. A rooftop deck will also contribute to the open space.

7. The basement level of the proposed building floor will have 22 parking spaces. Some of the parking spaces will be tandem. The building will have 1.57 spaces per unit. As proposed, the project will exceed the 1.2 required parking spaces under the Land Use Code. The Seattle Engineering Department's (SED) parking demand survey indicates that the anticipated demand for a typical multi-family dwelling is 1.5 parking spaces per unit. The SED's estimated number of parking spaces is based on an estimate of the fourteen units generating 85 vehicle trips per week.

8. DCLU concluded that there would be short term impacts related to temporary or construction related activity. The short term impacts, such as decreased air quality, soil erosion, movement and parking of vehicles around the site and mud tracking were adverse but were not significant. DCLU determined that some of the impacts could be mitigated through existing ordinances such as the Grading and Drainage Control Ordinance, Puget Sound Air Pollution Control Agency and Building Code. The other impacts would be mitigated through the conditions imposed by DCLU.

9. To mitigate some of the short term impacts associated with construction, DCLU required all construction vehicles to park in the garage as soon as the garage was completed. The noise generated by construction would be mitigated by limiting the hours of on-site construction to weekdays between 7:30 a.m. and 6:00 p.m.

10. The appellants seek assurances from DCLU that it will monitor the enforcement of the conditions. DCLU can enforce the compliance of

mitigating conditions through stop work orders. DCLU staff will inform the appellants of the appropriate person to contact to file a complaint if the construction crew violates the term of the conditions.

11. The anticipated long term or use-related impacts of development include increased water runoff, increased ambient noise from increased human and vehicular traffic, increased demand on public services and increased traffic and parking demands. DCLU concluded that the impacts are adverse but are not significant. However, since the long term impacts were not mitigated by the adopted ordinances or policies, further mitigation was warranted.

12. DCLU sought to mitigate the potential impacts of the proposed building under the vested height, bulk and scale provisions by using the authority granted to it under SMC 25.05.665(D) the SEPA ordinance. DCLU took the position that the proposed building should conform to current and future development standards rather than the development standards under which the applicant's project was vested.

13. If the applicant were allowed to develop under old standards the proposed building would be the tallest building in the area and would be the tallest to be built in the area in the foreseeable future. In order to mitigate that impact, DCLU required the applicant to reduce the overall height, bulk and scale of the building. The reductions intended to mitigate the impact of the building on the surrounding neighborhood, require the applicant to reduce the height of the building to 33.5 feet, which is one half the difference between the vested or former allowed height of 37 feet and the new maximum allowed height of 30 feet.

14. DCLU also required the applicant to reduce the width of the top floor of the building by 10 feet to provide a less bulky appearance.

15. The applicants did not appeal the decision. At least one appellant acknowledges that the required 10 foot setback on the top floors does not serve to benefit any of the appellants or their interest. The applicant is not pleased about the additional 10 foot setback because it will require an additional redesign and reduces the rentable space.

16. The appellants' primary concern is the increased traffic and parking on a neighborhood they feel is already bearing the burden of increased traffic on the surrounding arterials. Thirty-ninth Street, a narrow two lane street has become a busy arterial. The appellants provided videotapes of the traffic during the morning rush hour. During the two site visits, the undersigned observed a fairly high volume of traffic on 39th Street during the midday hours. The traffic volume during the 8:00 a.m. site visit was busy but not as busy as on the morning that the appellants' videotape was made. On both site visits, the on-street parking availability appeared to be adequate. There was no evidence of a formal traffic or parking utilization study. It is anticipated that the traffic and parking demands on the surrounding neighborhood will increase with the Quadrant Lake Union Center. The adverse impact

brought about by increasing the numbers of new tenants will not be mitigated by the conditions imposed by DCLU.

17. In addition to the parking and traffic concerns, the appellants and the other neighbors expressed concerns about the incompatibility of the multi-unit development in the middle of a block of primarily developed with single family and duplex homes. Some of the other concerns regarding the developer's character financial instability and the possibility that he will not be able to obtain sufficient funds to start and or complete the project once it is started are beyond the scope of the Examiner's authority.

18. Additional mitigations required by DCLU include a six foot solid wood fence along the north and south property lines to reduce the visual impact of the building to the adjacent properties. Additionally, columnar shrubs or trees shall be added as visual screening. The appellant whose home borders the eastern edge of the proposed building questions the requirement as their property sits several feet above the proposed site. It will take many years before any of the landscaping planted on the proposed site will serve to mitigate the view from the property below it.

CONCLUSIONS

1. The Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Director's decision on SEPA determinations must be given substantial weight. SMC 23.76.022(c)(7). The burden is on the appellants to prove that the Director's decision was in error.

3. An environmental impact statement (EIS) is required when the proposed action will have a significant affect on the quality of the environment. S.M.C. 25.05.330. Elements of the environment include land use plans and transportation impacts to the neighborhood. S.M.C. 25.05.44 (2) (3).

4. The Director's authority to require mitigation of the adverse impacts of a proposed development is found in S.M.C. 25.05.675. With respect to height, bulk and scale, DCLU has already imposed the maximum mitigation that it is authorized to impose under the SEPA policies. Though the neighbors are dissatisfied with the result, the appellants must be mindful that DCLU has already added considerable mitigation measures to lessen the impact of the project. Additionally, the required landscaping is intended to further reduce the visual impact of the building on the adjacent properties. The anticipated benefits of the required mitigation to the top floor and the landscaping may be questioned, but the beneficial intent of conditions is clear. The appellants have not proven a need for additional conditions to mitigate the impact of the building.

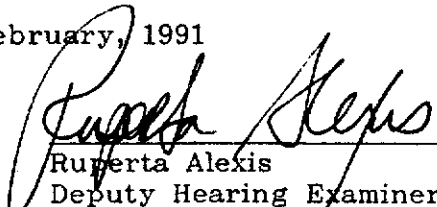
5. DCLU has exercised its authority to mitigate parking demands caused by the proposed development. First by reducing the overall height, bulk and scale of the proposed project, the building has fewer apartment units than originally proposed, thus reducing the number of tenants seeking on or off site parking. Additional parking impact mitigation could only be imposed if there was credible evidence that the on-street parking is at the 85% capacity defined by the SED or if it can be shown that the development would cause on-street parking to reach capacity. S.M.C. 25.05.675(M)(2). DCLU has required that a free parking space be provided with each unit for the life of the project. There is no persuasive evidence that the residents of the building will use on street parking rather than the free parking space.

6. DCLU has considerable authority to require a developer to change many features of the proposed development to mitigate the impact of the development on the surrounding property owners, neighbors and community, but DCLU does not have the authority to deny a project from proceeding solely because the project will have some negative or adverse impacts. None of the adverse impacts raised by the neighbors were considered to be significant by DCLU. The appellants have shown the traffic volume is heavy at times and that parking in the neighborhood can be congested and will likely increase with the proposed development as well as other developments that are sure to arise in an area zoned LR-3. But those concerns do not warrant cessation of development in the area. The appellants have not shown that the DCLU decision in this matter was in error, and it must therefore be affirmed.

DECISION

The DCLU determination of non-significance with conditions and approval of the master use permit is AFFIRMED.

Entered this 22nd day of February, 1991


Ruperta Alexis
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appeal from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of

compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this City Council appeal.

If no appeal is taken to the City Council, the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.